U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31221986

Date: JULY 16, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a quality control engineer for a major automotive company who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the Petitioner did not show that the totality of the evidence demonstrated his eligibility in a final merits determination. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner

does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then move to the second step to consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-step review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). He made that demonstration before the Director, who decided that the Petitioner satisfied three of the criteria relating to judging, authorship of scholarly articles, and performing in a leading or critical role.

On appeal, the Petitioner maintains that he satisfies one additional criterion, and his aggregate evidence establishes his eligibility as an individual of extraordinary ability. Because the Petitioner has already shown he fulfills the minimum requirement of at least three criteria, we will evaluate the totality of the evidence based on the documentation presented to the Director in the context of the final merits determination below. *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119–20). *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if a petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

The Petitioner earned a Ph.D. in industrial engineering from a U.S. institution of higher education in 2019, and he filed this petition in 2022. He specializes in chemically bonded sand systems utilizing specialized materials used in the foundry industry for casting metal molds. In this case, the molds are

utilized for vehicle parts. The Petitioner currently works as a quality control engineer for [redacted]. As indicated above, the Petitioner judged others in his field, authored scholarly articles, and performed in a leading or critical role for a distinguished organization. The record, however, does not demonstrate that his overall personal and professional achievements rise to a level of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Instead, it appears the Petitioner is a specialized industrial engineer at the outset of his career, who has demonstrated one achievement early in his professional journey.

In the appeal, the Petitioner contends that he offered extensive documentation through 35 pieces of evidence consisting of approximately a dozen opinion letters, his publications, and letters from those in management at his current employer. On the issue of extensive evidence, the Petitioner states the Director failed to explain how the evidence in the form of opinion letters "does not constitute the requisite 'extensive evidence[.]' Indeed, in cases with much less evidence, the denial of an EB1A petition has been reversed or remanded. See e.g. *Muni*, *supra* at 444–45 (Error to find evidence including 'eight affidavits' of experts, was insufficient support for EB1A petition)."

Regarding the *Muni* decision (*Muni v. INS*, 891 F. Supp. 440, 444–45 (N.D. Ill. 1995)), that district court stated that the appellate authority had "completely ignored" the affidavits. By contrast, in the matter currently before us, the Director discussed several of the testimonial letters. As a result, it appears the manner in which the Petitioner relies on the *Muni* case is inapplicable to his own. Equally as important, in contrast to the broad precedential authority of the case law of U.S. circuit courts of appeals, we are not bound to follow the published decision of a U.S. district court in matters arising even within the same district. *See K-S-*, 20 I&N Dec. 715, 719–20 (BIA 1993).

And on the issue the Petitioner highlights in *Muni* pertaining to other cases with less evidence being reversed, the regulation repeatedly reflects that an eligibility determination on a benefit request will be based on information contained in the record of proceeding. 8 C.F.R. §§ 103.2(b)(10), (11), (14), (16)(i)–(ii). Each case must be decided on its own facts with regard to the sufficiency of the evidence presented. *See, e.g.*, *Matter of H-C-R-C-*, 28 I&N Dec. 809, 812 (BIA 2024). Throughout the USCIS Policy Manual, it repeatedly states that agency officers will adjudicate numerous case types on a "case-by-case basis," and that is the method we will utilize here. *See, e.g*, 6 *USCIS Policy Manual* F.5(D), https://www.uscis.gov/policy-manual. Or, stated differently. A determination on the facts properly rests on what is implicated within each particular record of proceeding. *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2277 (2024) (Gorsuch, J., concurring) (stating that "different facts and different legal arguments might dictate different outcomes"); *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 507 (2023) (Jackson, J., concurring) (stating: "Other cases presenting different allegations and different records may lead to different conclusions").

When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. "Nothing is to be gained by a laundry-list recital of all evidence on the record supporting each view on every issue." *Puerto Rico Mar. Shipping Auth. v. Fed. Mar. Comm'n*, 678 F.2d 327, 351 (D.C. Cir. 1982) (finding claims to be unpersuasive that a trier of fact "did not consider the evidence because it did not catalogue every jot and tittle of testimony" or evidence). The lack of a direct discussion of factors does not mean that the Director ignored it; it instead may mean that they considered it and concluded it was unpersuasive. *See United States v. Teixeira*, 62 F.4th 10, 25

(1st Cir. 2023) (concluding a trier of fact is not required to articulate their conclusions as to every aspect of evidence when making an adjudication).

Now to discuss the Petitioner's achievements and whether they measure up to what this immigrant classification requires. Aside from his contributions of major significance in the field, the Petitioner's remaining accolades are not adequate to rise to the level necessary to approve this petition. This can be inferred from the appeal brief that extensively discusses his contributions of major significance, but regarding his remaining achievements he effectively only mentions that he satisfied the three additional regulatory criteria in step one of the adjudicative process. Here, the Petitioner does not advance substantive arguments describing how his experience judging, authoring scholarly articles, or performing in a leading or critical role should be considered in a final merits determination.

We note the Director's request for evidence specifically sought evidence and commentary demonstrating his achievements place him among that small percentage who have risen to the very top of the field. "While a person may be stronger in one particular evidentiary area than in others, the totality of the evidence must establish that the person is extraordinary." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2). Below, we evaluate whether his arguments about his contributions of major significance are adequate to counterbalance his less persuasive remaining achievements in his favor.

Regarding the Petitioner's judging experience, we agree with the Director's findings that although the Petitioner meets the plain language requirements of that criterion in step one, he has not shown that his experience is indicative of "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). As the Director noted, the Petitioner's judging performance has resulted in an insignificant amount of manuscript review in a single year. Even though the journal in which he was asked to perform peer review carries a certain level of prestige, the Petitioner did not establish that these two instances contribute to a finding that he has a career of acclaimed work in the field or that this performance is indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act.

Peer review is a routine element of the process by which articles are selected for publication in literary or scholarly journals or for presentation at literary conferences. Occasional participation in this process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Without evidence setting the Petitioner apart from others in his field (e.g., evidence that he has received and completed independent requests for review from a substantial number of journals or conferences, served in an editorial position for a distinguished journal, or chaired a technical committee for a reputable conference), we cannot conclude that he is among that small percentage who has risen to the very top of the field of endeavor. For instance, one reference letter author has served as Editor-in-Chief of the *International Journal of Metalcasting* (*IJMC*), and another served as a reviewer of more than 60 articles or papers. Thus, their level of judging suggests that the Petitioner's limited peer review experience does not place him within the small percentage at the top of his field.

Similar to the Petitioner's judging experience, his publication record falls far short of the standard required here. The Petitioner did not sufficiently explain how his limited publication record of: (1) authoring a few articles in American Foundry Society (AFS) Transactions, which features papers presented at the organization's annual meetings; or (2) authoring two papers in *IJMC* is consistent with having a career

of acclaimed work and sustaining national or international acclaim. This is far less than those listed within some opinion letters who published well above 50 or 60 scholarly works. Such a limited publication record is not out of the ordinary considering the Petitioner completed his Ph.D. less than three years before he filed the petition and the letter authors' careers have spanned decades in the field. As the Director's decision noted, the Petitioner did not submit evidence showing the significance of his authorships or how his publications compare to others who are viewed to be at the very top of the field. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

Moving to his claims relating to his performance in a leading or critical role for distinguished organizations, while the Petitioner claimed such a performance for two organizations, he only demonstrated one of those entities enjoyed a distinguished reputation. The Director decided his performance for his current employer was not commensurate with the type of acclaim that places him at the very top of his field of endeavor. In the appeal, the Petitioner contests the Director's findings stating the Director "erroneously disregards or misapplies other evidence of Petitioner's extraordinary ability, including the ripple effect of his lead and/or critical role at [redacted] These errors render its final merits analysis fatally flawed."

As it relates to the Petitioner's role at [redacted] he does not offer additional analysis to explain what evidence the Director might have disregarded or misapplied, nor does he offer more information on any ripple effects that his role at [redacted] might have in the industry. He mostly discusses his leading and critical role for [redacted] as a form of contributions of major significance to the field, and we will consider those aspects in that context below. But as it stands, the role he occupies with his current employer is notable, but not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field. The Petitioner does not explain how his performance for [redacted] has somehow impacted the broader field of endeavor, nor does he expand on how the claimed—but unsubstantiated—ripple effects compare with those in the upper echelon of his field.

Turning to the Petitioner's original contributions of major significance, his claims primarily relate to his research that led to "a methodology that for the first time allows for accurate and real time detection of casting defects that routinely occur in production due to the variations in the composition of sand during the casting process." We will first touch on that aspect and then we will address his claims relating to his work at [redacted]

Not only did the opinion letters the Petitioner offered describe his original research as a significant improvement over previous methodologies, but Professor [redacted] included the statement that that the AFS has endorsed the Petitioner's testing protocols and they are included in the standardized protocols the AFS recommends to the entire U.S. casting industry through the AFS Mold and Core Test Handbook. The professor noted that inclusion in these standardized protocols has benefited the U.S. casting industry and industrial sector as a whole, as American foundries and factories are now implementing the Petitioner's methodology resulting in cost, time, and material savings.

Professor [redacted] statements are corroborated by other letters as well as some objective material in the record; for instance in the letter from Dr. [redacted] as well as in a letter from the director of an international alloy steel casting company. We conclude that as a whole, the evidence is sufficient

to demonstrate the Petitioner's quality control methodologies have been widely accepted and implemented, resulting in improved efficiencies, and have been sufficiently influential in the field that they satisfy the regulatory criterion in step one of this adjudicative process.

In the appeal, the Petitioner claims the Director failed to consider the letters he submitted. As it pertains to the Petitioner's contributions, the only letter he names or discusses in the appeal is the correspondence from [redacted] Principal Consultant at [redacted] A review of Mr. [redacted] letter reveals that he offers extensive analysis relating to each of the relevant regulatory criteria pertaining to this immigrant classification. Mr. [redacted] describes how the Petitioner's achievements meet each criterion's requirements and proclaims he is a foreign national who clearly qualifies as one with extraordinary ability.

But when describing his credentials, Mr. [redacted] does not indicate that his expertise lies in any area associated with the immigration laws of the United States. While those authoring opinion letters are free to express their perspective, the decision of whether the evidence satisfies the requirements of a regulation or meets the burden of proof lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS); *see also Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (2012). We will therefore evaluate his letter as it describes the Petitioner's achievements and what impact those accomplishments have caused in the field.

Mr. [redacted] discusses the Petitioner's development of a new quality control protocol that largely mirrors Professor [redacted] account. He further states that the Petitioner became known in the field swiftly in what appears to be Mr. [redacted] acknowledgment that this foreign national is in the early stages of his career. As the remainder of the letters in the record express much of the same as Mr. [redacted] letter, it is unnecessary that we offer extensive analysis of them here. It is sufficient to say that each of them describes the adoption of the Petitioner's methodology in the AFS Mold and Core Test Handbook as influential throughout the industry.

Finally, the Petitioner states that his casting quality control methodology has facilitated [redacted] development of its novel and influential [redacted] production. However, the Petitioner does not indicate, nor does the evidence support, that he was responsible for creating the [redacted] process at [redacted] only that he was relevant to the continued improvement in quality of a class of large casting dies at the company. The Petitioner has not offered claims or evidence demonstrating that other entities in the industry have implemented the improvements to the [redacted] process at [redacted] that can be attributed to him. In fact, Mr. [redacted] indicated within his letter that the groundbreaking work the Petitioner is conducting a [redacted] will no doubt be studied and built on by an emerging generation of engineering specialists focused on design and launch of electric vehicles that integrate similar [redacted]

As Mr. [redacted] account here is speculative, it does not show that the Petitioner's work at [redacted] amounts to contributions that have already been realized within the field. A Petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the Petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). And as such, his claims relating to his work at [redacted] constituting a contribution of major significance in the field are not supported in the record.

Although the Petitioner's work may have brought him some rapid attention, he lacks a career of acclaimed work at a sustained national or international level. We place the Petitioner among those who achieve interest once early in their career, but who have not yet emerged among that small percentage at the very top of the field.

While the USCIS Policy Manual provides that a foreign national "may be very young or early in his or her career and still be able to show sustained acclaim" and that "[t]here is also no definitive time frame on what constitutes sustained," we conclude the Petitioner has not met his burden to demonstrate that he "continues to maintain a comparable level of acclaim in the field of expertise since [he] was originally afforded that recognition." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(A)(1).

Instead, it appears the Petitioner's situation is more akin to the Policy Manual's closing sentence in the Sustained National or International Acclaim section: "A person may, for example, have achieved national or international acclaim in the past but then failed to maintain a comparable level of acclaim thereafter." *Id.* For those whose careers are in the beginning stages, they must still demonstrate that overall they have built a career worthy of this classification's high bar. The fact that they are in the nascent stages of their career is not "a pass" to lower the standards associated with this highly restrictive immigrant classification.

Despite the Petitioner's claims to the contrary, he has not contributed extensive evidence for the record on par with the rigors of this immigrant classification. In summary, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). The Petitioner's evidence confirms that he has contributed to the field through his quality control methods. However, considering the full measure of his ability and achievements, the level of his national or international acclaim and the extent to which his achievements have been recognized in the field, these aspects are not indicative of a record of sustained acclaim. Also, he has not submitted extensive documentation exhibiting he has attained a level of expertise placing him among that small percentage that has risen to the very top of the field of endeavor.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

ORDER: The appeal is dismissed.